
(2021) 11 UK CK 0060
In the Uttarakhand High Court
Case No : Special Appeal No. 375 Of 2021

ONYX Techno System Pvt. Limited	Vs	APPELLANT
State Of Uttarakhand And Others		RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 12(5)

Citation : (2021) 11 UK CK 0060

Hon'ble Judges : Raghvendra Singh Chauhan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Rajendra Dobhal, Dushyant Mainali, S.S. Chaudhary, T.A. Khan, Vinay Bhatt

Final Decision : Dismissed

Judgement

Raghvendra Singh Chauhan, CJ

1. With the consent of the learned counsel for both the parties, this appeal is being decided at the admission stage itself.
2. For the sake of convenience, the parties shall be referred to as arrayed in the writ petition.
3. The petitioner has challenged the legality of the order, dated 01.10.2021, passed by a learned Single Judge in Writ Petition (M/S) No. 2032 of 2021, whereby the learned Single Judge has dismissed the writ petition filed by the petitioner.
4. Briefly, the facts of the case are that the Uttarakhand Sahkari Chini Mills Sangh Limited, the respondent No. 2, had invited competitive E-bids on 03.09.2021 for outsourcing the operation and maintenance of the Kisan Sahkari Chini Mills Limited, Sitarganj, District-Udham Singh Nagar, having cane crushing capacity 2500 TCD for crushing season 2021-22. The bid document stipulated that the bids shall be considered on two-tier basis: firstly, a technical bid and

secondly, a financial bid. As per the Schedule of the Tender Notice, the E-bids had to be submitted latest by 19.09.2021, and the online bids were to be opened on 20.09.2021 at 10:30 A.M.

5. Since the petitioner was desirous of being granted the work-order, the petitioner submitted its E-bid on 19.09.2021, along with all the relevant documents attached to its technical bid.

6. According to the petitioner, there were four bidders, who participated in the said bid. On 20.09.2021, the Tender Evaluation Committee found the two bids to be responsive, whereas the technical bid of the petitioner and of another bidder were rejected ostensibly on the ground that the documents uploaded with the E-bids were incomplete. Since the petitioner was aggrieved by the rejection of its technical bid, it filed the present writ petition before the learned Single Judge. However, as mentioned hereinabove, by the impugned order, the learned Single Judge has dismissed the writ petition. Hence, the present appeal before this Court.

7. Mr. Rajendra Dobhal, the learned Senior Counsel appearing on behalf of the petitioner, submits that the learned Single Judge has not dealt with the heart of the matter, which was the legality of the rejection of the technical bid. According to the learned Senior Counsel, the learned Single Judge ought to have examined, whether the technical bid was rejected on justifiable and legal grounds or on unjustifiable and illegal grounds? Instead, the learned Single Judge has considered the existence of Clause-12 of the Tender Notice, and concluded that in case of any dispute between the parties, the parties can approach an arbitrator in accordance with Clause-12.

8. Secondly, the word "party" has been defined under the Arbitration and Conciliation Act, 1996 (for short 'the Act'), to mean "a party to an arbitration agreement". However, according to the learned Senior Counsel, a tender notice is merely an offer, and until and unless, a work contract is given, in fact, no agreement or contract comes into existence. A tender notice cannot be considered as an agreement. Therefore, the learned Single Judge is unjustified in relegating the petitioner to seek its relief in arbitral proceedings. Therefore, the impugned order deserves to be set aside.

9. On the other hand, Mr. T.A. Khan, the learned Senior Counsel appearing on behalf of respondent No. 2, submits that no fruitful purpose would be served by setting aside the impugned order, for the work-order has already been allotted to one of the bidders.

10. In rejoinder, Mr. Rajendra Dobhal, the learned Senior Counsel, submits that since the learned Single Judge has relegated the petitioner to arbitral proceedings, the petitioner would be preempted from approaching the Civil Court for seeking damage against respondent No. 2. Therefore, the impugned order deserves to be set aside by this Court.

11. Heard the learned counsel for the parties, and perused the impugned order.

12. Admittedly, the issue before the Writ Court was, whether the petitioner's technical bid was rejected on legal or illegal grounds?

13. A bare perusal of the impugned order clearly reveals that the learned Single Judge has not entered into the merits or demerits of the said issue. Instead, the learned Single Judge has merely noticed the existence of an arbitration clause, namely Clause-12.

14. Clause-12 of the Tender Notice is as under:-

In case of any dispute arising between the parties, the matter shall be referred to the Administrator, Uttarakhand Sahkari Chini Mills Sangh Limited, Dehradun who shall be the sole arbitrator and his decision shall be binding on both the parties. Provisions of Arbitration and Conciliation Act, 1996 shall apply. Place of arbitration shall be Dehradun.

15. The said clause uses the word "parties". The word "party" has been defined under the Act as "a party to an arbitration agreement". However, a tender notice is not an agreement, but is merely a proposal. Therefore, Clause-12 of the Tender Notice would not come into effect until and unless an agreement is entered into between a bidder and the respondent No. 2. Therefore, the learned Single Judge is unjustified in concluding that since the arbitration clause does exist, the petitioner should approach an arbitrator.

16. Moreover, the arbitration clause deals with the appointment of the sole arbitrator, who shall be the Administrator of the Uttarakhand Sahkari Chini Mills Sangh Limited, Dehradun. But the arbitration clause is itself against the tenor of Section 12(5) of the Arbitration and Conciliation Act, 1996.

17. Although it is true that since the work-order has already been issued, the Writ Court could not have turned the historical clock back. However, merely because a work-order has been issued to a third party, it would not preempt the petitioner from challenging the action of respondent No. 2 in rejecting its technical bid. Therefore, the petitioner should have been left free to pursue any other legal remedy, which may be available and, if so advised, to the petitioner.

18. For the reasons stated above, the impugned order, dated 01.10.2021, passed by the learned Single Judge, is set-aside. The petitioner shall be free to pursue the legal remedies available to it.

19. By way of an abundant precaution, it is, hereby, clarified that if the petitioner pursues the legal remedies available to it, this Court does expect the learned Civil Court to decide the dispute unaffected by this order and strictly in accordance with law.

19. No order as to costs.